IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 577 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO.LTD. - Appellant(s)
Versus
MANHARLAL NATHUBHAI & 3 - Defendant(s)

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Appearance :
MR SB PARIKH for Appellant,
MR RR MARSHALL for Defendant(s) : 1 - 2, 2.2.1, 2.2.2,2.2.3
NOTICE UNSERVED for Defendant(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/08/2007

ORAL JUDGMENT

1. Mr.S.B. Parikh, learned counsel for the appellant and Mr.R.R. Marshal, learned counsel for the respondent

Nos.1, 2.1 to 2.3. None for the respondent No.3 and 4, though served.

2. The Insurance Company, being aggrieved by the award dtd.25/9/1987 passed by the Motor Accident Claim Tribunal (Auxiliary), Surat in Motor Accident Claim Petition No.136 of 1984, is before this Court with a submission that the tribunal erred in awarding a sum of Rs.50,000=00 in excess to the entitlement of the claimants.

3. As the rashness, negligence, accident and liability of the driver and owner are not under challenge, it is not necessary to burden this judgement by detailing the said facts. The only question to be considered by the Court would be whether the tribunal was justified in awarding a sum of Rs.97,400=00 in favour of the claimants.

4. Mr.Parikh, learned counsel for the appellant, after taking me though the evidence of the father and the alleged employer of the deceased, submitted that the total income of the deceased could not be assessed at Rs.1000=00 and even otherwise the dependency factor

could not be assessed at Rs.600=00. He also submitted that looking to the age of the parents who were the dependents, multiplier of 10 could not be applied.

5. Mr.Marshal, learned counsel for the respondents claimants, however, submitted that in the present case, application of multiplier of 12 would lose its importance, because, the claimants, even after 20 years of the award, are still surviving and with the time lag, they have become infirm in making further earning. He also submitted that the findings of the learned tribunal that the present claimant – father was helping and assisting the deceased to the tune of Rs.300=00, is a finding based on no evidence. He also submitted that in a case like present, future prospects of the deceased are taken into consideration and if ordinary rule of deduction of 2/3rd in favour of deceased, is applied, then too, the claimants would be entitled to a sum of Rs.600=00 per month.

6. After going through the statements of Manubhai Dahyabhai – father and the person who was giving job to the deceased, I am unable to hold that the tribunal was justified in recording the finding that the father was

helping and assisting to the extent of Rs.300=00 in the work of the son. The father has simply said that after the death of the son, he was earning Rs.400=00 to Rs.500=00 per month. This statement of the father of the deceased would not mean that while his son was alive, he was assisting the son to the extent of Rs.400=00 to Rs.500=00. After the death of the breadwinner, if a person starts earning, then that would not mean that such could be the assistance to the deceased. The tribunal also erred in not taking into consideration the future prospects of the deceased. From the evidence of Hiralal, it would only appear that he was one of the person who was providing job work to the deceased and he was not the sole person who was providing job or aiding the deceased with him.

7. Taking into consideration the totality of the circumstances, I am of the considered opinion that the tribunal was not unjustified in finding the dependency at Rs.600=00 per month. The question of multiplier, in the special circumstances of this case, would also lose importance, because the respondents, almost after about 24 years of the accident, are still surviving and by now

they must have become aged and fragile to earn.

8. Taking into consideration the totality of the circumstances, I am unable to hold that the tribunal was unjustified in making the impugned award in favour of the claimants.

9. The appeal deserves to and is accordingly dismissed. No costs.

(R.S. GARG, J.)

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